IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5910 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LAXMIBEN JAGSHI GALA W/O GALA GOPAL SHIVJI & 4 - Petitioner(s)

Versus

ADDITIONAL CHIEF SECRETARY & 2 - Respondent(s)

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Appearance :

MR JIVANLAL G SHAH for Petitioner(s) : 1 - 5.
None for Respondent(s) : 1, 3,
M/S PATEL ADVOCATES for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/09/2005

ORAL JUDGMENT

1. In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgement and order passed by the Gujarat Revenue Tribunal dtd.18/11/1988 in Revision Application/TEN/BA No.41 of 1984 in dismissing the same and confirming the order passed by the Deputy Collector, Anjar dtd.14/8/1984 in Appeal No.89 of 1984 as well as order passed by the Mamlatdar and Agricultural Lands Tribunal ("ALT" for short), (Ceiling), Bhachau dtd.27/2/1982, in declaring 8 Acres and 26 Gunthas of land from the land bearing Survey Nos.204, 221 and 357 of village Manfara, Taluka Bhachau, as surplus land under the provisions of the Gujarat Agricultural Lands (Ceiling) Act, 1960 (hereinafter referred to as "the Ceiling Act" for short).

2. The land in question was owned by the father of the petitioner i.e. Jagshibhai Dhanjibhai Kala, residing at Village Manfala, Tal.Bhachau. He submitted Form No.2 under the provisions of the Ceiling Act and

the Mamlatdar and ALT, Bhachau vide order dtd.28/2/1978 ordered that the matter be closed as he did not have surplus agricultural land. The said order came to be taken under suo-motu review by the Deputy Collector and the Deputy Collector vide his order dtd.28/2/1979 set aside the order passed by the Mamlatdar and ALT dtd.28/2/1978 and remanded the matter to the Mamlatdar and ALT to decide the matter afresh, after holding inquiry de-novo. The Mamlatdar and ALT on remand passed an order dtd.27/2/1982 and held that as on 1-4-1976, said Jagshibhai Dhanjibhai held 30 Hectors 9 Acres and 88sq.mtrs. of land in his Account NO.81, which was in excess of ceiling limit. He also further held that the transfer of Survey No.272, admeasuring 17 Hectors 21 Acres and 95 sq.mtrs reflected vide Mutation Entry Nos.441, 442 on 13/2/1978 were not accepted since the said transfers were in the period covered under the provisions of sec.8 of the Act i.e. between 24/1/1971 and 1-4-1976. He has also held that the the said transfers said to have been affected under an Agreement-to-sale, were not believable, as the sale deeds were executed on 28/4/1976 and Mutation Entry Nos.441 and 442 were posted on 13/2/1978. He has also further held that the land bearing Survey No.191 of Village Kharoi, admeasuring 7 Acres and 27 Gunthas was transferred by

Mutation Entry No.243 dtd.13/8/1978 and hence the said transfer was also hit by the provisions of Sec.8 of the Ceiling Act and accordingly he held that the said Jakshibhai is holding 8 Hectors 24 Are and 56 Gunthas, as surplus land under the provisions of the Ceiling Act and he passed order to acquire the same from the land bearing Survey Nos.204, 221 and 357 of Village Manfala. Being aggrieved by and dissatisfied with the said order, the petitioner preferred an appeal before the Deputy Collector, Anjar being Appeal No.89 of 1984 and it was contended on behalf of the petitioners that they being daughters of the original land owners, were entitled to get separate unit. The Dy.Collector not accepted the said contention and dismissed the Appeal No.89 of 1984 by its order dtd.14/8/984. Being aggrieved by and dissatisfied with the said order passed by the Dy.Collector, Anjar dtd.14/8/1984 in Appeal No.89 of 1984, the petitioners preferred a Revision application before the Gujarat Revenue Tribunal being Revision Application No.41 of 1984. The Gujarat Revenue Tribunal vide its judgement and order dtd.18/11/1988 dismissed the said revision application, confirming the orders passed by both the authorities below. Being aggrieved by and dissatisfied with the judgement and order passed by the Gujarat Revenue Tribunal in

Revision Application No.41 of 1984 dtd.18/11/1988 in dismissing the revision and confirming the orders passed by the authorities below, have preferred the present petition under Article 227 of the Constitution of India.

3. Heard the learned advocates appearing on behalf of the parties and considered the material on record. It is the contention on behalf of the petitioners that the petitioners being daughters, were entitled to have separate units and therefore, all the authorities below have materially erred in declaring the aforesaid land as surplus land under the provisions of the Gujarat Agricultural Lands Ceiling Act, 1960. It is also further submitted that so far as the land situated at Village Kharoi is concerned, the same was given by way of gift to one of the daughters at the time of her marriage and that the transfer by way of Agreement-to-sale of SY-2020 executed through the sale-deed in 1978 by Mutation Entry Nos.441 and 442 were wrongly considered in the holding of the original land owners. It is required to be noted that under the provisions of sec.8 of the Gujarat Agricultural Lands Ceiling Act, 1960, any transfer / transaction made during the period between 24-1-1971 and 1-4-1976 is required to be considered in the holding of

the original land owner. When the land was sold by the registered sale deed executed on 28/4/1976 and the Mutation Entry Nos.441 and 442 were posted in the revenue record on 13/2/1978, the said transfer is hit by the provisions of sec.8 of the Gujarat Agricultural Lands Ceiling Act, 1960 and therefore, it is rightly considered in the holding of the original land owners.

4. The contention of the petitioners that the Agreement-to-sale was executed much earlier and therefore, the said land cannot be considered in the holding of the original land owners, cannot be accepted. What is required to be considered is the transfer by way of sale and as such, the Banakhat / Agreement-to-sale does not confer any right, title or interest in favour of the person in whose favour the Agreement-to-sale is executed. The contention on behalf of the petitioners that they being daughters are entitled to separate units, is required to be rejected outright , as under the provisions of the Act, no such unit are required to be given to the married daughter.

5. In view of the above, there is no substance in the present petition.

6. Over and above, there is concurrent finding of facts given by all the authorities below, and hence the same is not required to be interfered with in exercise of the powers under Article 227 of the Constitution of India. There is no illegality committed by the Gujarat Revenue Tribunal and/or the authorities below, much less any error of law. The impugned order is just, legal and proper and the same do not call for any interference at the hands of this Court.

7. For the reasons stated hereinabove, there is no substance in the present petition and the same is required to be dismissed and is accordingly dismissed. Rule is discharged. Ad-interim relief granted earlier stands vacated forthwith. However, there will be no order as to costs.

(M.R. SHAH,J.)

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